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H. Phleger. It has not yet been determined by whom their courses will be given. Professor Kidd will be absent on leave during the first semester. His courses in Evidence and Criminal Law will be given by Professor Eugene A. Gilmore of the University of Wisconsin School of Law.

To meet the new demands arising out of the war the School of Law will offer several new courses. An advanced course in International Law, discussing the problems raised by the great war will be offered by Professor Elliott. Professor Wright will supplement his course in Admiralty, by offering a seminar course in Admiralty and Maritime Law. Provision will also be made for a course in Military Law.

Comment on Recent Cases

CORPORATIONS: SURVIVAL OF STOCKHOLDERS' LIABILITY FOR TORTS.—Holding that the liability of a stockholder for the torts of the corporation under the California statute,¹ which provides that the stockholders shall be personally liable for all the "debts and liabilities contracted or incurred" by the corporation, is not penal in its nature, but contractual and remedial, the court in *Lininger v. Botsford*² decided that it would survive and could be enforced against the estate of a deceased stockholder.

It is a general rule, applicable both at common law and under the statutes of the several states, that causes of action based upon contract survive the death of either party and may be enforced by or against his personal representative,³ and that actions for statutory penalties do not survive the death of the wrongdoer.⁴ In accordance with this general rule, it is held that where the statutes are remedial and the liability is contractual in character, the cause of action against the stockholders for corporate debts survives;⁵ but where the liability is penal in character, the cause of action based thereon does not survive.⁶

¹ Cal. Const. Art. 12, § 3; Cal. Civ. Code, § 322.

² (Dec. 26, 1916), 24 Cal. App. Dec. 1, 163 Pac. 63.

³ *Iron Gate Bank v. Brady* (1902), 184 U. S. 665, 46 L. Ed. 739, 22 Sup. Ct. Rep. 529; *Janin v. Browne* (1881), 59 Cal. 37; Cal. Code Civ. Proc., § 1582; 1 C. J. 181.

⁴ *United States v. Theurer* (1914), 213 Fed. 964; *People v. Newcomb* (1912), 75 Misc. Rep. 258, 135 N. Y. Supp. 151; *Allen v. Petty* (1900), 58 S. C. 240, 36 S. E. 586.

⁵ *Cochran v. Weichers* (1890), 119 N. Y. 399, 23 N. E. 803, 7 L. R. A. 553. See *Major v. Walker* (1913), 23 Cal. App. 465, 138 Pac. 360.

⁶ *Diversey v. Smith* (1882), 103 Ill. 378, 42 Am. Rep. 14.

In the principal case the liability of the stockholders for the torts of the corporation is not penal in nature; it is not a liability in the form of a forfeiture for the failure to do, or for the doing of something required or prohibited by statute, irrespective of the amount of injury occasioned to those for whose benefit the statute is to operate.⁷ In so far as the stockholders' liability applies to the debts of the corporation, it is apparent that the liability is of a contractual nature; the intending stockholder undertakes to be bound by the general law, which is construed to involve an offer on the part of the stockholders to become personally liable for their proportionate share of the corporate debts contracted while they are stockholders.⁸ But the conception of the contractual nature of the stockholders' liability for the torts of the corporation is difficult to understand. It is rather strained to say that the stockholders offer to assume liability for damages to any one who may be injured by the tortious acts of the corporation. On the other hand, it is not a direct tortious liability, which even though statutory would abate on the death of the wrongdoer, unless it is expressly provided that the liability survives.⁹ It is more like the liability of a surety; the stockholders are not considered the wrongdoers themselves and their liability is primary only in the sense that it is not necessary that the person injured by the tortious act of the corporation should first exhaust his remedies against the corporation before proceeding against the stockholders.¹⁰ It may be better to consider the stockholders' liability for torts of the corporation simply as a statutory liability, which the legislature intended should survive. In so far as the statute imposes a stockholders' liability for the debts of the corporation, it is reasonable to hold that the liability is contractual in nature and should not die with the stockholder.¹¹ It appears reasonable to hold that the liability for the torts of the corporation imposed by the same statute was intended to be as complete as that for the debts of the corporation, i. e., that this liability should survive the stockholder.

F. H. M.

DEEDS: A FRAUDULENT GRANTEE FROM AN ILLITERATE GRANTOR CAN PASS NO TITLE TO A BONA FIDE PURCHASER.—The

⁷ *Cable v. McCune* (1858), 26 Miss. 371, 72 Am. Dec. 214; *Rider v. Fritchey* (1892), 49 Ohio 285, 30 N. E. 692, 15 L. R. A. 513.

⁸ *Kennedy v. Cal. Sav. Bank* (1892), 97 Cal. 93, 31 Pac. 846, 33 Am. St. Rep. 163; *Ferguson v. Sherman* (1897), 116 Cal. 169, 47 Pac. 1023, 37 L. R. A. 622; 2 *Morawetz, Private Corporations* (2d. ed.), §§ 870-872; 4 *Thompson, Corporations* (2d ed.), § 4790.

⁹ *Harker v. Clark* (1881), 57 Cal. 245; *Fowden v. Pac. Coast S. S. Co.* (1906), 149 Cal. 151, 86 Pac. 178; *Penn. Co. v. Davis* (1891), 4 Ind. App. 51, 29 N. E. 425.

¹⁰ *Foreign Mines Dev. Co. v. Boyes* (1910), 180 Fed. 594; see 1 *California Law Review*, 61.

¹¹ *Richmond v. Irons* (1887), 121 U. S. 27, 30 L. Ed. 864, 7 Sup. Ct. Rep. 788; *supra*, n. 5.